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No. 71-51

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

MARION LAGERQUIST, ET AL

Petitioners

v.

THE STATE OF SOUTH CAROLINA

Respondent

Petition for Writ of Certiorari to the Supreme Court of the State of South Carolina

---

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Respondent

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The petitioners, Marion Lagerquist, Richard B. Harding, Garlie Allen Black, Michael Ross, Louis Burell Pittman, Wallace Lee Campbell, Jr., Robert H. Howell, James Claude Goodman, William Glenn Younginer, O. L. Hayden and George Turner, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of the State of South Carolina entered in this proceeding on the 14th day of April, 1971 (rehearing denied May 5, 1971).

OPINION BELOW

The opinion of the Supreme Court of the State of South Carolina denying petitioners' appeal is fully set forth in Appendix A attached hereto.

JURISDICTION

The judgment of the Supreme Court of South Carolina in affirmance of the lower court was entered April 14, 1971 (Appendix A, infra). A petition for rehearing timely filed was denied by order dated May 5, 1971 (Appendix B, infra).

QUESTIONS PRESENTED

The issues for determination are:

1. Did the conduct of the trial judge in refusing to declare a mistrial when it was brought to his attention that certain newspaper articles had appeared in local papers, which articles were highly prejudicial to the fairness of the trial of the defendants, violate that due process of law guaranteed under Article XIV of the Amendments to the Constitution of the United States?

2. Did failure of the trial judge to poll the jury with reference as to whether or not any juror had read any of the above articles violate that due process of law guaranteed by Article XIV of the Amendments to the Constitution of the United States?

3. Did the failure of the trial court to take necessary steps to insure that a transcript of proceedings was promptly prepared and made available to petitioners deny them a speedy trial within the contemplation of Article VI of the Amendments to the Constitution of the United States, particularly where the delay in such preparation was for a period of two and one-half years?

CONSTITUTIONAL PROVISIONS INVOLVED

The XIV Article of Amendments to the Constitution of the United States provides in pertinent part, under Section 1 thereof, as follows:

> . . . "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article VI of the Amendments to the Constitution of the

United States, which is likewise involved, provides in pertinent part:

> "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial . . .".

STATEMENT OF THE CASE

Petitioners were indicted in the State of South Carolina for the offense of a criminal conspiracy arising out of certain alleged misrepresentations made by them in the course of selling conversion privileges under certain life insurance policies. This was the only charge against them. After the jury had been struck, and after the case had proceeded for two days, appellants through their counsel called the court's attention to an Associated Press article that had appeared in the *Columbia Record*, a newspaper having a general circulation in Greenville where the trial was taking place. This article, in addition to giving the names, ages and residences of all the petitioners, stated:

> "The trial of eleven insurance men charged with failing to deliver policies they sold and pocketing the money that they received continued today in General Sessions Court in Greenville."

This trial involved a conspiracy charge and was in no way related to any charge dealing with the failure to deliver policies or the failure to deliver the money received (which, of course, would amount to either the crime of embezzlement or larceny after trust, depending upon the exact circumstances). The jury had been permitted to disperse throughout the trial.

Promptly upon this being called to the attention of counsel for the petitioners, they made a motion for a mistrial upon the grounds that the article was false, highly prejudicial, that the defendants were not charged with any such criminal offense in this trial, that the jury had in all probability seen such article, and that failure to grant a mistrial would deprive the defendants of due process of law as guaranteed by Article XIV of the Amendments to the Constitution of the United States.

The trial court stated that he had previously instructed the jury at the commencement of the trial not to read anything about the trial in the newspapers and that he would presume that the jurors had followed his instructions. He did not inquire

of the jurors if they had read the article, either by *voir dire* or individual poll. Thereupon, he overruled the motion for a mistrial (Transcript of record, pages 570-573.)

On the following day, two additional newspaper articles of similar import, one appearing in the *Anderson Daily Mail*, a newspaper having a general circulation in Greenville, and the other in the *Index Journal*, a newspaper from a nearby community having a somewhat limited circulation in Greenville, were called to the court's attention and the motion for a mistrial was renewed. Again, the court failed to poll the jury as to their having read either of the articles and denied the motion for a mistrial. (Transcript of record, pages 1099-1100.)

On neither occasion did the court instruct the jury not to give any credence to any newspaper articles that may have come to its attention.

The case proceeded on to a verdict of guilty and the imposition of a fine on each of the defendants. Defendants made a motion for a new trial which was overruled and filed a notice of appeal requesting at the time of such filing that the transcript of proceedings be prepared. The petitioners, both orally and in writing, subsequently renewed their request for the filing of a transcript of proceedings but this was not done for a period of two and one-half years and then, only after petitioners had made a motion for a judgment of acquittal based on the failure to supply a transcript so as to permit the perfection of an appeal. The cause was heard and argued in the Supreme Court of South Carolina, resulting in a judgment of affirmance.

THE RAISING OF THE FEDERAL QUESTIONS

As previously pointed out in the statement of the case, the question of the prejudicial nature of the newspaper articles and the failure of the court to take any action with relation thereto, was raised by motion for a mistrial in which the due process questions under the XIV Amendment were specifically raised and directed to the court. (Transcript of proceedings, 570-573.)

The question of the delay in furnishing petitioners a transcript of proceedings was made by appellants on December 11, 1969 (32 months after the first request for a trial transcript) in the form of a motion to set aside the convictions, which motion

specifically raised the delay as being unreasonable under the VI Amendment to the Constitution of the United States.

This question was also subsequently raised in the mail appeal but was primarily delt with in the preliminary opinion, copy of which is hereto attached and marked Appendix C.

REASONS FOR GRANTING OF THE WRIT

The decision of the Supreme Court of South Carolina should be reviewed because it completely misconstrues the doctrine of "protective" due process in a criminal case as applied to insuring that a defendant is found guilty or innocent solely upon the basis of lawful evidence adduced in the court room. It further seems to feel that there is some self-corrective procedure derived from the evidence actually presented. This fails to follow the standards recognized by the United States Courts.

It should be noted that the petitioners were indicted for a charge of conspiracy in connection with their capacities as insurance agents in the sale of insurance. This court, as former practicing attorneys, cannot help but recognize that in a single indictment no two more prejudicial statements could be made than the words "conspiracy" and "insurance". Thus, any additional extra judicial prejudice falls upon an extremely sensitive area. The Supreme Court of South Carolina, in its opinions, stated that this article could not have been prejudicial and gave as its reason:

> "The trial lasted about nine days. The true nature of the charges were abundantly clear. The article referred to the trial then in progress and if any member of the jury read it, he could not help but detect that the writer had described the charges erroneously."

Of course, the fact remains that the accusation of other misconduct is still in the minds of the jury and experience teaches that such accusation cannot help but influence the jury in passing upon the guilt or innocence before them under the indictment.

In *Silverthorne v. United States*, 400 F. 2d 627 (9 Cir. 1968), it was stated:

> "Jurors are not presumed to separate the truth from

> the falsity in newspaper articles concerning the trial in which they sit as judges of fact. The jury's impartiality must be kept free from 'any outside influence, whether of private or public print.' *It is therefore the affirmative duty of the trial court to take positive action to ascertain the existence of improper influence on the jurors' deliberative qualifications* and to take whatever steps are necessary to diminish or eradicate such improprieties. (Emphasis added.)

And further, in the same case:

> "Despite the inability of the trial judge to prevent newspapers or other news media from being brought to the attention of a non-sequestered jury alleging evidence of misconduct of the defendant not offered against him at the trial, the trial court cannot assume that all is well, or that there is nothing he can do. He is required to assume, until he has established otherwise by *voir dire* examination, 'that some of this material reached the members of the jury':"

In *Margoles v. United States*, 407 F. 2d 727 (7 Cir. 1969), it is stated:

> "Therefore, once the existence of a news account of inadmissible evidence is brought to the attention of the trial court, as was done in the instant case, the court is required to take appropriate steps to insure that the jurors had not been exposed to or prejudiced by such accounts."

In *United States v. Battaglia*, 394 F. 2d 304 (7 Cir. 1968), at p. 317, it is stated:

> "There is no claim that any jurors read any of the 'prejudicial' articles, thus differentiating the case from Marshall v. United States, 360 U.S. 310, 79 S.Ct. 1171, 3 L. Ed. 2d 1250. In Janko v. United States, 336 U.S. 716, 81 S. Ct., 1662, 6 L. Ed. 2d 846, the second conviction was reversed because the trial court had not inquired whether the jurors had read a St. Louis Post Dispatch article published during the trial and containing 'inadmissible prejudicial information.'

> Here the jurors were twice asked whether they had seen the articles about the case. None admitted having done so."

In *Commonwealth v. Crehan*, 188 N.E. 2d 923, the Supreme Court of Massachusetts stated:

> "As the jurors had separated and the poll sought was denied, we must assume that they had read the articles. We need not determine the rule to be applied in the absence of an effort by the defendants to ascertain whether the jury had read the articles. (Citations omitted.) On this assumption some action by the judge was required to overcome the possibility of prejudice."

This court recognized this principle in *Marshall v. United States*, 360 U.S. 310, 79 S.Ct. 1171, on page 1173:

> "The trial judge has a large discretion in ruling on the issues of prejudice resulting from the reading by jurors of news articles concerning the trial. Generalizations beyond that statement are not profitable because each case must turn on a special fact. We have here the exposure of jurors to information of a character which the trial judge ruled was so prejudicial that it could not be directly offered in evidence. Prejudice to the defendant is almost certain to be as great when the evidence reaches the jury through news accounts as when it is a part of the prosecution's evidence. It may indeed be greater for it is not then tempered by protective procedures." (Citations omitted.)

The Fourth Circuit case of *United States of America v. Virginia Milanovich*, 303 F. 2d 626, on page 629, in dealing with prejudicial newspaper articles being available for jurors to have read, it is stated:

> "When discovery of such events is made after the jury is sworn, then a new trial is mandatory unless the Government can affirmatively show that the jurors could not have been affected by it. (Citations omitted.) In the latter instance the burden is not upon the de-

fendant to establish that he was prejudiced thereby."

The rule is well stated by the Third Circuit in the case of *United States of America v. Kum Seng Seo*, 300 F. 2d 623, on page 625:

> "But whatever may have been the law prior to *Marshall*, since that decision it has been clear that a new trial should be granted in federal criminal cases when it is shown that members of the jury have read news accounts containing inadmissible and inaccurate facts prejudicial to the defendants."

Thus, it seems clear that where the possibility of a disbursed jury being influenced by prejudicial news accounts is brought to the attention of the trial court, particularly where a motion for a mistrial is made, the court may not sit quietly by and rely on previous instructions but must ascertain whether such accounts have been read and act accordingly.

Insofar as the delay in furnishing petitioners a transcript of the proceedings is concerned, it should be pointed out that the South Carolina Supreme Court in their decision (Appendix C attached hereto) recognized that the delay was unreasonable; however, they state that such a delay is not prejudicial. Again the petitioners must ask the members of this court to call upon their own experiences as trial counsel. This trial lasted nine full days. Thirty-four months later a voluminous transcript was finally completed. No mere mortal can, after such a lapse of time, intelligently read such a transcript and determine from memory the matters that were and were not important or critical during the course of the trial. If the delay was, as the court indicated, unreasonable, and, was not occasioned by any conduct on the part of these petitioners, but rather occurred in spite of their repeated requests that the transcript be completed, and further if the delay was due to the action of the official Court Reporter, then it would seem that such delay is sufficiently unreasonable and prejudicial as to invalidate the conviction.

CONCLUSION

It is submitted that the conduct of the trial judge hereinbefore complained of clearly denied petitioners of a fair trial and

consequently of due process. Under all of the circumstances attendant thereon it is equally clear that the delay in furnishing the transcript was unreasonable and was caused by action of the officials of the State of South Carolina and not by any action of petitioners. It is, therefore, urged that this case is one of those in which a writ of certiorari should be granted.

Respectfully submitted

Hoke Smith
Attorney for the Petitioners

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OF COUNSEL

CERTIFICATE OF SERVICE

I, Hoke Smith, of counsel for petitioners, Marion Lagerquist, et al., do certify that I have this date served a copy of the foregoing Petition for Writ of Certiorari to the Supreme Court of the State of South Carolina upon

_____

_____

_____

_____

_____

by depositing a copy of same in the United States Mail, with sufficient postage affixed thereto to insure delivery, to addressees indicated above.

This day of , 1971.

_____

Hoke Smith

IN THE

SUPREME COURT OF THE STATE OF SOUTH CAROLINA

THE STATE

Respondent,

versus

MARION LAGERQUIST, RICHARD B. HARDING, GARLIE ALLEN BLACK, MICHAEL ROSS, LOUIS BURELL PITTMAN, WALLACE LEE CAMPBELL, JR., ROBERT H. HOWELL, JAMES CLAUDE GOODMAN, WILLIAM GLENN YOUNGINER, O. L. HAYDEN and GEORGE TURNER,

Appellants.

Appeal From Greenville County
Francis B. Nicholson, Judge

Opinion No. 19205
Filed April 14, 1971

AFFIRMED

Wesley M. Walker, Herman E. Cox, and Ernest J. Howard, all of Greenville; and Hoke Smith, of Smith, Cohen, Ringel, Kohler, Martin & Lowe, of Atlanta, Georgia, for appellants.

Solicitor B. O. Thomason, Jr., of Greenville, for respondent.

LITTLEJOHN, A. J.: The eleven appellants were found guilty of criminal conspiracy to unlawfully obtain insurance dividend funds in violation of code sections 16-366, 37-251 and 37-253.

We affirm the convictions.

Some years prior to 1965 the Francis Marion Life Insurance Company operated in South Carolina. It sold a "coupon" type of life insurance policy, under the terms of which a portion of the premium was applied for insurance coverage and the remainder was placed in a savings account fund belonging to the owner of the policy. The policyholder had certain control rights over the fund, including the right of withdrawal on designated anniversary dates. Certain conversion rights were granted under the policy.

In 1961 Francis Marion Life Insurance Company was acquired by the Kennesaw Life and Accident Insurance Company through merger and stock exchange. With the merger Kennesaw took over the operations of Francis Marion and assumed liability on the outstanding policies.

In the late summer of 1965 officials of Kennesaw decided upon a plan whereby they would attempt to persuade its policyholders to convert the accumulated savings into additional life insurance prepaid for a fixed number of years. The plan was to induce the policyholders to sign over to the company the accumulated savings, for which the company would issue insurance policies. Kennesaw had no straight-life insurance salesmen in South Carolina, but had many annuity salesmen. Kennesaw decided to use these annuity salesmen for a short one-time campaign of contacting those policyholders who originally held Francis Marion policies and who had accumulated savings.

Appellants Lagerquist, Howell and Harding were officers of Kennesaw. They came to Greenville, South Carolina on or about October 18, 1965 and explained the details of the conversion plan to the other defendants, who were employees of Kennesaw.

It was at this sales meeting that the State charges all of the appellants with having conspired to defraud Francis Marion policyholders of their accumulated savings.

In addition to the three officers and eight other employees whose cases are now on appeal in this court, one other salesman, Henry Ingram, was also charged. He pled guilty prior to the trial. It was on the basis of Ingram's testimony, and that of twenty-one other witnesses, that the appellants were found guilty.

After the defendants were convicted and sentenced the transcript of record was ordered from the official court reporter for appeal purposes. The same was not delivered to counsel for the appellants until thirty-three months later. The appellants moved before the trial court to dismiss the cases on the ground that they had been denied a speedy review and due process because of the unusual delay. The lower court refused the motion and this court affirmed. See State v. Lagerquist, et al., 254 S. C. 501, 176 S. E. (2d) 141 (1970). The first issue presented on this appeal for our determination was whether the lower court erred in not *sua sponte* directing the preparation and filing of the transcript of record. For the reasons set forth in our reported case we find the exception without merit.

Before the trial of the case was commenced the appellant, George Turner, moved to quash the indictment so far as it applied to him because he had been summoned before the grand jury. The motion was overruled. He alleges error on the part of the lower court in refusing to grant the motion. No factual showing was made to the lower court, or to this court, as a basis for granting the relief sought. The trial judge correctly overruled the motion.

Appellants next allege error on the part of the lower court in denying their motions for a mistrial based on newspaper publicity alleged to be prejudicial. During the trial there appeared in the Columbia Record, published about 100 miles from Greenville, and in the Anderson Daily Mail, published about 30 miles from Greenville, and in the Greenwood Index Journal, published about 50 miles from Greenville, an Associated Press story stating that the trial of the appellants was continuing. It indicated that the appellants were "charged with failing to deliver policies they sold and pocketing the money that they received." If, by chance, this article came to the attention of any member of the jury, we do not think it could have been prejudicial. The trial lasted about nine days; the true nature of the charges were abundantly clear. The article referred to the trial then in progress, and if any member of the jury read it he could not help but detect that the writer had described the charges erroneously. The article was not of an inflammatory nature nor such as to warrant a mistrial. In addition, we take notice of the charge which the judge gave to the jury when he said:

> "I emphasize to you and charge you specifically please do not listen to or read those reports for

simple reason that no matter how good a reporter is nevertheless they may emphasize a fact that you would not so these parties are entitled to have you try this case upon your impression of the evidence."

The further contention that the judge should have polled the jury to determine if they had read the articles is without merit. The duty to poll the jury presupposes a prejudicial publication. Counsel did not ask the judge to poll the jury, and we find no error in his failing to do so of his own volition.

Appellants next contend that a new trial should be granted because State's witness Henry Ingram testified that he had previously pled guilty to the same charge. The following is taken from the record:

"Q. Now, I want to ask you whether or not on Friday of last week, Mr. Ingram, you pled guilty to this criminal conspiracy?
"A. Yes, sir.
"MR. WALKER: If your Honor please, we submit that it would (sic) appropriate to anything that he may have done for your Honor to instruct the jury with regard to what he may have done.
"THE COURT: Yes, sir. Do you want the instruction now?
"MR. WALKER: Yes, sir. I would appreciate it.
"THE COURT: Mr. Foreman and gentlemen, it will be a basic rule and I will again charge it to you at the conclusion of this trial it is a basic rule that the action of any one person of course has no effect upon the positions of the others as they appear in Court and any action in response to the charge that this witness may have taken is not to be considered by you as affecting the positions of the others."

We are not at all sure that counsel objected to the testimony. Assuming, as now contended in appellants' brief, that objection was made, and assuming without so deciding that the question and answer were irrelevant, we think that the trial judge correctly dealt with the matter in his forthright statement and charge to the jury.

The case of United States v. Toner, 173 Fed. (2d) 140 (1948),

relied on by appellants, is of no comfort to them. In that case similar facts were involved, but the error which brought about a new trial lay in the fact that the judge instructed the jury that ". . . the jury can take into consideration that one of two co-conspirators did plead guilty and make such use of it as they see fit. That is where the American common sense comes in. I won't define any further what they can do and cannot do with that kind of evidence."

Appellants also seek comfort in Bruton v. United States, 391 U. S. 123 (1968); that case is inapposite to the situation presented here. In Bruton the co-defendant's confession was admitted into evidence through the testimony of the Federal agent to whom he had confessed. The decision turned on the constitutional right to confront witnesses. In the case at bar Ingram was on the witness stand and available for cross examination. The jurors were entitled to know who the witness was and the State was entitled to show the relationship of the witness to the parties and to the case.

After the questions and answers indicated above, the prosecuting attorney asked the witness if he had been promised anything in connection with his guilty plea. His answer (which was, "No, sir") was objected to on the ground that "It's not against these defendants, your Honor." Thereupon the court further stated to the jury:

> "Of course it's not and I have so charged the jury and asked them to keep it in mind. Anything pertaining to Mr. Ingram's own personal disposition has no connection and no relation to the other defendants."

We think that no prejudice has been shown and we hold the exception without merit.

Appellants contend finally that the lower court erred in not granting their directed verdict motion. They stress the "open and honest" nature of the regular sales meeting at which the alleged conspiracy occurred; there is little appeal to their reasoning that no conspiracy could conceivably have taken place at a meeting such as this one, or that a conspiracy, by its very nature, must be secret and clandestine.

The testimony of Ingram consumes some 190 pages in the

transcript, and it is clearly inferable from his testimony that the salesmen had been instructed that in contacting the policyholders they were to conceal the fact that policyholders' own accumulated savings would be used for purchase of new policies. At page 41 of the transcript we note the following:

> "Q. Now, what, if anything, did Mr. Harding and Mr. Lagerquist tell you and the other agents there with regard to this savings that had been building up in the Francis Marion policies?
> "A. Well, most of the people didn't realize that they had savings in there and that it would be real easy to convert by not knowing they had it in there. We weren't to tell them it was in there unless we had to and convert it."

At page 42 of the transcript, in explaining the instructions given at the meeting, Ingram testified:

> "A. Well, we were to be given a work sheet that showed us how much money had been accumulated, how much each one of them had saved up in the policy and on this work sheet it showed how much accumulated savings he had and how much insurance it would buy. And we were to go to them and tell them that we weren't very familiar with the old Francis Marion policy or anything but that some money had accumulated in the old Francis Marion Company and we were to tell them that we didn't know very much about it and to tell them that they could take this insurance that was paid up and it wouldn't take any money out of their pocket."

At page 51 of the transcript we find the following testimony by Ingram:

> "Q. What, if anything, did Mr. Harding tell you about showing this worksheet to the policyholders you were to call on?
> "A. Well, we weren't to show this to the policyholders?
> "Q. And why did Mr. Harding tell you, if he did, that you were not to show this worksheet to the policyholders?

"A. Well, that it would more or less confuse them. They would know that they had this savings and they would probably associate their savings were going to come out to buy this insurance. And then you wouldn't be able to convert it."

In further describing that which took place at the meeting, Ingram testified:

"Q. Now, what if any instructions did they give you, you and the other agents, with regard to telling these prospects or policyholders of Francis Marion that you were converting their savings to buy this new insurance?
"A. Well, we weren't to tell them that we were actually using their savings. We were supposed to just act like we didn't know anything about it. If they asked us we were to say we weren't familiar with it that you would have to check back with the home office but if they wanted to take advantage of the insurance you had to get the things filled out now."

After the agents had sold the policyholders on the insurance program they were to get a statement of assignment from each assigning all rights in the accumulated savings to Kennesaw. Ingram testified about the assignment as follows:

"Q. All right. Now what, if anything, did Mr. Harding or Mr. Lagerquist tell you about the assignment?
"A. That it was to be signed by the insured (sic) blank . . . .
". . .
"Q. Now, were you told or given any instruction with reference to getting the assignment signed in blank?
"A. Well, we were to tell them that the home office was real busy and hadn't had time to fill them out and that they would be filled out at the home office and mailed back to them."

The State presented witnesses who testified to overt acts on the part of each of the eight salesmen in furtherance of the agreement at the October 1965 meeting. Policyholders were brought into court to describe the sales pitch of each of the eight salesmen. The testimony of these policyholders shows that

each of the eight salesmen did just what Lagerquist, Harding and Howell had instructed them to do.

The following is taken from our case of State v. Fleming, 243 S. C. 265, 113 S. E. (2d) 800 (1963):

> "Conspiracy is defined by Section 16-550, Code of Laws 1962, as follows:
>
> " 'The crime known to the common law as 'conspiracy' is hereby defined as a combination between two or more persons for the purpose of accomplishing a criminal or unlawful object or an object neither criminal nor unlawful by criminal or unlawful means.'
>
> "The foregoing statute is declaratory of the common law definition of conspiracy. State v. Jacobs, 238 S. C. 234, 119 S. E. (2d) 735, and authorities cited therein. It need not be shown that either the object or the means agreed upon is an indictable offense in order to establish a criminal conspiracy. It is sufficient if the one or the other is unlawful. State v. Davis, 88 S. C. 229, 70 S. E. 811. Nor need a formal or express agreement be established. A tacit, mutual understanding, resulting in the willful and intentional adoption of a common design by two or more persons is sufficient, provided the common purpose is to do an unlawful act either as a means or an end. 15 C. J. S., Conspiracy § 40. Although the offense of conspiracy may be complete without proof of overt acts, such acts may nevertheless be shown, since from them an inference may be drawn as to the existence and object of the conspiracy. It sometimes happens that the conspiracy can be proved in no other way.' State v. Hightower, 221 S. C. 91, 69 S. E. (2d) 363. 'To establish sufficiently the existence of the conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties. The circumstantial evidence and the conduct of the parties may consist of concert of action.' 15 C. J. S., Conspiracy § 93a."

The evidence is susceptible of the inference that the defendants conspired together to cheat and defraud certain policy-

holders of their accumulated savings and dividends by misrepresentation and concealment. The issues were properly submitted to the jury, and the judgment of the lower court is

AFFIRMED

MOSS, C. J. LEWIS, BUSSEY and BRAILSFORD, JJ., concur.

THE SUPREME COURT OF SOUTH CAROLINA

Frances H. Smith
Clerk

P. O. Box 11358
Columbia, S. C. 29211

May 5, 1971

Wesley M. Walker, Esquire
P. O. Box 2248
Greenville, South Carolina

RE: The State v. Lagerquist, et al.

Dear Mr. Walker:

The Court has this day refused your petition for rehearing in the above case in the following order:

"Petition for rehearing denied. Motion for a stay of execution pending appeal to the United States Supreme Court granted for a period of ninety (90) days only.

s/ Joseph R. Moss	C.J.
s/ J. Woodrow Lewis	A.J.
s/ Thos. P. Bussey	A.J.
s/ J. M. Brailsford	A.J.
s/ Bruce Littlejohn	A.J.

May 5, 1971."

The remittitur is being withheld for a period of ninety (90) days.

Very truly yours,

/s/ Frances H. Smith

Clerk

FHS:ml

CC: The Honorable Joel E. Gottlieb
Solicitor Thomas W. Greene

IN THE

SUPREME COURT OF THE STATE OF SOUTH CAROLINA

THE STATE

Respondent,

v.

MARION LAGERQUIST, RICHARD B. HARDING, GARLIE ALLEN BLACK, MICHAEL ROSS, LOUIS BURELL PITTMAN, WALLACE LEE CAMPBELL, JR., ROBERT H. HOWELL, JAMES CLAUDE GOODMAN, WILLIAM GLENN YOUNGINER, O. L. HAYDEN and GEORGE TURNER

Appellants.

No. 19091

July 30, 1970

Wesley M. Walker, Herman E. Cox and Ernest J. Howard, Greenville, Hoke Smith, of Smith, Cohen, Ringel, Kohler, Martin & Lowe, Atlanta, Ga., for appellants.

Sol. B. O. Thomason, Jr., Greenville, Atty. Gen. Daniel R. McLeod and Asst. Attys. Gen. C. Tolbert Goolsby, Jr., and Joel E. Gottlieb, Columbia, for respondent.

LEWIS, Justice

Appellants were convicted in the Court of General Sessions for Greenville County of criminal conspiracy and served notice of intention to appeal to this Court. They subsequently moved to set aside their convictions on the grounds that delay of the

court reporter in providing them with a transcript of the trial proceedings had deprived them of due process, equal protection of the laws, and the right to a speedy trial or remedy as guaranteed by the State and Federal Constitutions. This appeal is from the order of the lower court denying the motion to dismiss the convictions. We affirm.

A detailed review of the various facets of the factual controversy would serve no useful purpose. It is conceded that appellants were convicted on March 29, 1967 and thereafter timely served notice of intention to appeal, which was followed by an immediate request for a transcript of the record from the court reporter. The trial consumed approximately nine (9) days and all parties recognized that the court reporter could not complete the trial transcript in time for appellants to timely perfect the appeal. Accordingly, a consent order was issued by the trial court extending the time for perfecting the appeal until sixty (60) days after the furnishing of the transcript. The appellants were admitted to bail pending the appeal.

The motion to set aside their convictions was made by appellants on December 11, 1969, approximately thirty-two (32) months after the initial request for the trial transcript. The motion followed two or three additional requests to the court reporter that the record be furnished. However, no application was ever made to the court for an order requiring that the court reporter transcribe the record more promptly.

It is undisputed that the transcript could have been sooner furnished, but was not because of other demands of court work upon the reporter and her judgment, mistaken perhaps, as to the priority to be accorded the various matters which demanded her attention. There is no showing that the delay was arbitrary or purposeful.

The transcript of the record was finally completed on February 5, 1970, eliminating the only impediment to the prosecution of the appeal on the merits.

Appellants contend that the delay (1) has denied them the right to a speedy trial and remedy guaranteed to them by Article 1, Sections 15 and 18 of the South Carolina Constitution and by the Sixth Amendment of the United States Constitution;

and (2) has deprived them of due process and equal protection of the laws guaranteed to them by Article 1, Section 5 of the South Carolina Constitution and the Fourteenth Amendment to the United States Constitution.

While the trial transcript should have been furnished with greater dispatch, the record fails to show that the delay has deprived appellants of any constitutional rights.

The guaranties afforded by Article 1, Section 18 of the South Carolina Constitution and by the Sixth Amendment to the Constitution of the United States are inapplicable to an appeal. These provisions expressly state that the accused shall enjoy the right to a "speedy and public trial, by an impartial jury." The *trial* referred to means a trial by a jury to determine guilt or innocence and does not include an *appeal* which is simply the method provided for review of the proceedings in a trial which has already been held.

Appellants contend however that Article 1, Section 15, of the South Carolina Constitution guarantees to them a "speedy remedy" which includes the right to a "speedy appeal." citing Rylee v. Marett, 121 S.C. 366, 113 S.E. 483.

Article 1, Section 15, provides:

> "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained."

The following statement is found in the Rylee case, upon which appellants rely:

> "A lax observance of the very reasonable regulations prescribed by the statute and the rules of court for perfecting appeals can but lead to unnecessary delay in the final disposition of causes in our courts, and thus work infringement of the constitutional guaranty (section 15, art. 1, Const. 1895) that 'every person shall have speedy remedy therein for wrongs sustained'."

In Rylee, the foregoing dicta was used with reference to an appeal in a civil case. The guaranty, in Article 1, Section 15, of a speedy remedy for wrongs sustained has no application to a

criminal prosecution. The word *wrongs* embraces "every injury to or impairment of rights of person or property." Davis v. Whitlock, 90 S.C. 233, 73 S.E. 171. *Remedy* simply denotes the means by which such a wrong is redressed in a civil proceeding. The application of Article 1, Section 15, to civil remedies *only* is clear, we think, when reference is made to Section 18 of Article 1. The latter section specifically refers to "criminal prosecutions" and guarantees to an accused "the right to a speedy and public trial." Such guaranty in Section 18 would have been unnecessary if it had been intended that Section 15 apply to criminal proceedings.

The foregoing does not mean however that the right of appeal is beyond the reach of constitutional protection. Where a right of appeal is granted, an accused must be afforded due process and equal protection of the laws in its exercise. Delay, which deprives an accused of the effective exercise of the right of appeal, may amount to a deprivation of such rights. The record before us, however, fails to show an infringement of any right of appellants to obtain appellate review of their convictions.

The only purpose in obtaining the transcript of the trial proceedings was to enable appellants to assert their right to an appellate review upon the merits of their convictions. The delay has not deprived them of that right. They may still assert it. Although delayed, there is no showing that the appeal upon the merits cannot be just as effectively prosecuted now as earlier. Therefore, the contention that they have been deprived of due process and equal protection of the laws is without merit.

Judgment affirmed.

MOSS, C. J., and BUSSEY, BRAILSFORD and LITTLEJOHN, JJ., concur.